

AMENDED IN ASSEMBLY APRIL 30, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 941

Introduced by Assembly Member Torrico

February 22, 2007

An act to amend Section 10240 of the Business and Professions Code, and to add Section 1922 to the Civil Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, Torrico. Real property loans: documents.

Existing law, the Real Estate Law, requires a real estate broker, who negotiates a loan to be secured by a lien on real property, to deliver to the borrower a statement in writing containing specified information relating to the loan transaction. ~~A willful violation of the Real Estate Law is a crime.~~ Existing law requires a lender to provide a borrower with specified information prior to execution by the borrower of a mortgage payment instrument.

This bill would ~~require~~ *authorize* a real estate broker to provide a borrower the option to receive a copy of this statement, ~~and any other document connected with the loan,~~ in an electronic format ~~instead of in paper format, paper format, or both,~~ as specified. The bill would also ~~require~~ *authorize* a lender, as defined, that negotiates or services a loan secured by a lien on real property to provide a borrower with the option to receive a copy of ~~any document connected with the loan the disclosures required by the Real Estate Settlement Procedures Act of~~

1974 and the Truth in Lending Act in an electronic format, *paper format*, or both.

~~Because a willful violation of the bill's requirements by a real estate broker would be a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~*no*. State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10240 of the Business and Professions
2 Code is amended to read:

3 10240. (a) Every real estate broker, upon acting within the
4 meaning of subdivision (d) of Section 10131, who negotiates a
5 loan to be secured directly or collaterally by a lien on real property
6 shall, within three business days after receipt of a completed written
7 loan application or before the borrower becomes obligated on the
8 note, whichever is earlier, cause to be delivered to the borrower a
9 statement in writing, containing all the information required by
10 Section 10241. It shall be personally signed by the borrower and
11 by the real estate broker negotiating the loan or by a real estate
12 licensee acting for the broker in negotiating the loan. When so
13 executed, an exact copy thereof shall be delivered to the borrower
14 at the time of its execution. The real estate broker negotiating the
15 loan shall retain on file for a period of three years a true and correct
16 copy of the statement as signed by the borrower.

17 No real estate licensee shall permit the statement to be signed
18 by a borrower if any information required by Section 10241 is
19 omitted.

20 (b) For the purposes of applying the provisions of this article,
21 a real estate broker is acting within the meaning of subdivision (d)
22 of Section 10131 if he or she solicits borrowers, or causes
23 borrowers to be solicited, through express or implied
24 representations that the broker will act as an agent in arranging a

1 loan, but in fact makes the loan to the borrower from funds
2 belonging to the broker.

3 (c) In a federally regulated residential mortgage loan transaction
4 in which the principal loan amount exceeds the principal loan
5 levels set forth in Section 10245, a real estate broker satisfies the
6 requirements of this section if the borrower receives (1) a “good
7 faith estimate” that satisfies the requirements of the Real Estate
8 Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.),
9 and that sets forth the broker’s real estate license number and a
10 clear and conspicuous statement on the face of the document stating
11 that the “good faith estimate” does not constitute a loan
12 commitment, (2) all applicable disclosures required by the Truth
13 in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan
14 contains a balloon payment provision, the disclosure described in
15 subdivision (h) of Section 10241, the balloon disclosure required
16 for that loan by Fannie Mae or Freddie Mac, or an alternative
17 disclosure determined by the commissioner to satisfy the
18 requirements of the Truth in Lending Act.

19 Prior to becoming obligated on the loan the borrower shall
20 acknowledge, in writing, receipt of the “good faith estimate” and
21 all applicable disclosures required by the Truth in Lending Act.
22 The real estate broker shall retain on file for a period of three years
23 a true and correct copy of the signed acknowledgment and a true
24 and correct copy of the “good faith estimate” and all applicable
25 disclosures required by the Truth in Lending Act as acknowledged
26 by the borrower.

27 (d) A real estate broker ~~shall~~ *may* give a borrower the option to
28 receive a copy of the statement required by this section ~~and any~~
29 ~~other document connected with the loan in electronic format instead~~
30 ~~of in paper format~~ *in electronic format, paper format, or both*. For
31 purposes of this subdivision, “electronic format” means a format
32 in which the information is held in a record created, generated,
33 sent, communicated, received, or stored by electronic means. The
34 electronic format shall be a format that does not jeopardize or
35 compromise the security or integrity of the original record or of
36 any proprietary software in which it is maintained.

37 SEC. 2 Section 1922 is added to the Civil Code, to read:

38 1922. A lender, as defined in paragraph (2) of subdivision (a)
39 of Section 1921, that negotiates or services a loan for a borrower
40 secured directly or collaterally by a lien on real property ~~shall give~~

1 ~~the borrower the option to receive a copy of any document~~
2 ~~connected with the loan in electronic format instead of in paper~~
3 ~~format may give the borrower the option to receive a copy of the~~
4 ~~disclosures required by the Real Estate Settlement Procedures Act~~
5 ~~of 1974 and the Truth in Lending Act in electronic format, paper~~
6 ~~format, or both.~~ For purposes of this section, “electronic format”
7 means a format in which the information is held in a record created,
8 generated, sent, communicated, received, or stored by electronic
9 means. The electronic format shall be a format that does not
10 jeopardize or compromise the security or integrity of the original
11 record or of any proprietary software in which it is maintained.

12 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
13 ~~Section 6 of Article XIII B of the California Constitution because~~
14 ~~the only costs that may be incurred by a local agency or school~~
15 ~~district will be incurred because this act creates a new crime or~~
16 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
17 ~~for a crime or infraction, within the meaning of Section 17556 of~~
18 ~~the Government Code, or changes the definition of a crime within~~
19 ~~the meaning of Section 6 of Article XIII B of the California~~
20 ~~Constitution.~~